IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 3281 OF 2004
IN
CENTRAL EXCISE REF. ST. NO. 4380 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
APRIL 30, 2007.

Heard Shri Jaiswal, learned counsel for the applicant and Shri Mishra, Assistant Solicitor General for the respondent.

The application is moved by the applicant for condonation of delay of four years and 217 days in filing an application under Section 35A(1) of Central Excise Act, 1944. Explanation given is larger Bench of Tribunal has in judgment in the case of C.C.E., Rajkot vs. Ashok Iron & Steel Fabricators, reported at 2002 (100) ECR 431 on 7.1.2002 reversed the view which was taken by the Division Bench in the matter of present applicant on 20.10.1998. It is contended that after the view of larger Bench, writ petition came to be filed before this Court bearing Writ

Petition No.196 of 2002 on 30.3.2002 which came up for hearing on 28.8.2003 and was allowed to be withdrawn with liberty to present applicant to exhaust statutory remedy of filing appeal under Section 35G of Central Excise Act, 1944.

The learned counsel for the applicant contends that the issue is squarely covered because the credit was already availed and product was exempted later on and in view of such exemption, earlier payment could not have been taken away. He further states that the applicant has already reversed the credit and therefore delay needs to be condoned.

The learned Assistant Solicitor General for the respondent points out that the larger Bench has not given this decision in the case of present applicant and he further states that larger Bench judgment has come after more than four years of the order and the said order was never challenged. He further points out that even the decision on which the present applicant is placing reliance to contend that issue is squarely covered, has not considered this issue on merit because the SLP has been dismissed and there is judgment on

the point.

We find that it is not necessary for us to go into all this details because the order is passed in October 1998 and it was not challenged either in writ petition or in any other proceedings within the statutory period. It is only in 2002 when other larger Bench judgment has come up in favour of present applicant, writ petition was filed and after withdrawing it, the present application has been filed. It is, therefore, apparent that the issue has already been concluded by the judgment of Division Bench of this Court against the applicant on 20.10.1998 and there is no justification for condoning such huge delay. The subsequent larger Bench judgment has got no relevance in this respect.

Accordingly, civil application is rejected. No order as to costs.

JUDGE **JUDGE**

*GS.